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April 22, 2010

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2010 APR 23 AM 8:54
OFFICE OF GENERAL
COUNSEL

Jeff S. Jordan, Esq.
Office of the General Counsel
Federal Election Commission
999 E. Street, NW
Washington, DC 20463

Re: MUR 6257: John Callahan and Callahan for Congress

Dear Mr. Jordan:

The undersigned represent John Callahan and John Callahan for Congress ("JCFC" or "Respondents," collectively). By this letter, the committee responds to a complaint filed by Robert A. Gleason, Jr. In his complaint, Mr. Gleason alleges that JCFC violated the "prohibited transfer provision set forth in 11 C.F.R. 110.3(d) and for violation of the testing the waters provisions set forth in 11 C.F.R. 100.72(a) and 100.131(a)," Complaint at 1, when Mr. Callahan's Pennsylvania mayoral campaign committee made a payment to a "Democratic research firm" to perform opposition research in anticipation of Mr. Callahan's candidacy for the U.S. House of Representatives in the 2010 election cycle.

The Respondents do not dispute the underlying facts in this matter, that Mr. Callahan's mayoral campaign committee, Friends of John Callahan, made payments to Stanford Campaigns, an entity in Austin, Texas, that performs a wide variety of campaign-related services, including opposition research. Respondents dispute, however, the characterization of these payments as expenditures intended to "test the waters" for a potential federal candidacy and deny that the payments were an improper transfer from a state candidate committee to a federal candidate committee. As explained below, the research was procured, and originally used, by Friends of John Callahan, a non-federal campaign committee maintained in connection with John Callahan's campaign for reelection as Mayor of Bethlehem. Second, before any information was used by Mr. Callahan's congressional campaign, the federal committee paid fair market value to the state campaign committee to obtain the information. Therefore, no "transfer" or in-kind contributed resulted.

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FACTS AND ANALYSIS

Friends of John Callahan ("FJC") is a candidate committee registered with the state of Pennsylvania as the principal campaign committee for John Callahan's candidacy for mayor of Bethlehem, Pennsylvania. FJC is subject to the prohibitions, limitations and reporting requirements of Pennsylvania law. FJC may collect contributions in any amount from individuals and political committees, as well as partnerships, LLPs and LLCs of which no member is a corporation. 25 Pa. Cons. Stat. § 3253(d). Mr. Callahan was first elected mayor of Bethlehem in November 2003, and ran for and won re-election in 2005 and 2009. He served on the Bethlehem City Council for several years prior to his election as mayor, the youngest person ever to hold a Bethlehem council position.

In May and June, 2009, FJC made two payments to Stanford Campaigns in the amounts of \$4,500 and \$5,432.83, respectively. These payments were reported to the Pennsylvania Department of State on FJC's campaign disclosure reports as expenditures for "Research." Stanford Campaigns, based in Austin, Texas, conducts opposition research and other services for political clients. John Callahan for Congress filed a Form 1 Statement of Organization and Form 2 Declaration of Candidacy with the FEC on July, 31, 2009. The complaint concedes that at the time of these payments to Stanford Campaigns, "John Callahan had not yet filed with the FEC." Complaint at 2.

The complaint argues that because John Callahan became a federal candidate after these payments to Stanford Campaigns for "research", the purpose of the payments and the research were to "test the waters" for a federal candidacy. The Federal Election Campaign Act (the "Act") and the Commission's "testing the waters" regulation provides that the term "expenditure" does not include "[p]ayments made solely for the purpose of determining whether an individual should become a candidate." 11 CFR 100.131(a). If the individual subsequently becomes a candidate, the payments are considered "expenditures" retroactively and are subject to the reporting requirements of the Act. *Id.* FEC regulations further state that "transfers of funds or assets from a candidate's campaign committee or account for a nonfederal election to his or her principal campaign committee or other authorized committee for a federal election are prohibited." *Id.* § 110.8(d). Thus, the complaint argues, if the payments to Stanford Campaigns were (1) for the purpose of "testing the waters" for a federal candidacy and (2) used by or transferred to the federal candidate committee to further a federal candidacy, then the research was paid for with impermissible funds and constituted an improper in-kind contribution to the federal candidate committee.

First, Respondents maintain that the payments to Stanford Campaigns from the mayoral campaign committee were for use of the information the research obtained and any value it had for the mayoral election that was to take place in November 2009. At the time of the payments, Mr. Callahan was still running for re-election for mayor of Bethlehem. Furthermore, at that time, he had made no decision regarding a possible run for federal office. In addition, Mr. Callahan was still actively raising money for his re-election campaign for mayor. See *Finances of John Callahan Campaign Finance Reports*, available at <http://www.campaignfinance.state.pa.us/>. The information gathered by Stanford Campaigns had inherent value to the mayoral campaign and therefore was properly paid for with funds from that committee.

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In addition, background self-research is markedly different from a poll designed to test an individual's name recognition or favorability ratings within a particular area. The nature of a poll clearly indicates that an individual is considering a run for office, as the FEC has found on numerous occasions. See, e.g., First General Counsel's Report, MUR 4935 (Here for Congress), at 21-22. Background research, by contrast, may be used for a variety of purposes not related to federal elections.

The complaint cites statements made by Justin Schall, the federal committee's campaign manager, in its assertion that the research was conducted "in preparation for Callahan's run for congress." Complaint at 3. The article does not quote Mr. Schall directly—instead, it infers that Mr. Schall confirmed that the research had been done before the federal campaign existed, which is, in fact, true. Contrary to what the article asserts, however, Mr. Schall never stated that the research was conducted to benefit the federal campaign or even to "test the waters" for a possible federal candidacy. In fact, during this interview, Mr. Schall made clear to the reporter several times that the research had intrinsic value to the ongoing mayoral campaign and therefore had to be paid for with funds from the mayoral campaign committee. The report failed to mention this fact as it did not fit the story the reporter was trying to tell. Mr. Schall also stated during this conversation that the federal campaign was not using the research but that, when and if the mayoral election was over and a potential federal campaign decided to utilize the research, the federal committee would pay the mayoral committee the fair market value for the use of the research. Again, the reporter also failed to mention this fact. On January 15, 2010, when the federal committee decided to use the research, it paid the mayoral committee for use of the material at fair market value. Payment was made a full month before this complaint was filed.

Second, Respondents did not make a prohibited transfer of funds or assets from Mr. Callahan's mayoral campaign committee to his federal candidate committee in violation of 11 C.F.R. § 110.3(d). The research conducted by FJC, the mayoral committee, was not used by the federal committee in connection with Mr. Callahan's election until after the January 15, 2010 payment to the mayoral committee. Thus, before the material was used by the federal committee, JCFC made a fair market value payment of \$5,000 to FJC for the pro-rated cost to purchase the research. The expenditure to FJC was disclosed by JCFC on the first quarter FEC report filed on April 15, 2010.

For the reasons stated above, the Respondents did not use impermissible funds to pay for background research in preparation for Mr. Callahan's candidacy for federal office, and the mayoral campaign committee did not improperly transfer its assets to the federal candidate committee. We respectfully request that the Commission find no reason to believe that any violation of the Act occurred and close the file.

Sincerely,



Neil Reiff
Counsel for Respondents

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